MCI

MCI Telecommunications Corporation
1801 Pennsylvania Avenue, NW
Room 433
Washington, DC 20006
202 887 3040
Fax 202 887 2772

Kecia Boney
Senior Regulatory Counsel
Local Markets and Enforcement

EX PARTE OR LATE FILED

ORIGINAL

RECEIVED

JAN - 6 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 6, 1999

EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, Room TWB-204
Washington, D.C. 20554

RE: In the Matter of Petition for Preemption of Tennessee Code and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Areas
CC Docket No. 98-92

Dear Ms. Salas:

MCI WORLDCOM, Inc. hereby submits this letter in response to the Commission's request for a list of state statutes that are similar to the statute at issue in the above-captioned proceeding. Attached is a list, and copies, of the relevant statutes.

If there are any questions, please feel free to contact the undersigned.

Sincerely,

Kecia Boney

Kecia Boney

Enclosures

cc: John Reel

STATE STATUTES - RESTRICTIONS	MODEST RESTRICTIONS ON COMPETITION
Louisiana "TSPs are permitted to provide telecommunications services in all historically designated ILEC service areas . . . with the exception of service areas served by ILECs with 100,000 access lines or less statewide." In re Regulations for Competition in the Local Telecommunications Market, General Order, 1997 WL 191023 app. B, sec. 202 (La P.S.C. rel. Apr. 1, 1997).	**Alaska** "In an area where the Commission determines that two or more public utilities are competing to furnish identical utility service and that this competition is not in the public interest, the Commission shall take appropriate action to eliminate the competition and any undesirable duplication of facilities." Alaska Stat. § 42.05.221(d) (1997).
New Mexico "[A]ny telecommunications company with less than one hundred thousand access lines holding a certificate of public convenience and necessity to provide local exchange service to the public shall have the exclusive right to provide local exchange service within its certificate service territory and shall not be subject to competition in the provision of local exchange service in its certificate service territory." N.M. Stat. Ann. § 63-9A-6 D (1997). "In determining whether the public convenience and necessity require such second plant or equipment the Commission shall consider and determine upon substantial evidence whether the following conditions existed at the time of the filing of said application: (1) the existing telephone or telegraph service is inadequate to meet the reasonable needs and convenience of the public." N.M. Stat. Ann. §63-9-9 B (1997).	**Kansas** "The Commission finds that the guidelines [that a CPCN be granted if the service area of an incumbent rural telephone company is capable of sustaining more than one telecommunications provider] shall be adopted to the extent that such guidelines are not preempted by Federal law and are consistent with State law." In re General Investigation into Competition within the Telecommunications Industry in the State of Kansas, SCC Docket No. 190,492-U 94-GMT-478-GIT, Order on Reconsideration, paras. 34, 36 (rel. Feb. 3, 1997).
North Carolina "[The Commission shall not be authorized to issue a certificate] applicable to franchised areas within the State that are being served by local exchange companies with 200,000 access lines or less located within the State." N.C. Gen. Stat. § 62-110 f(2) (1997).	**Missouri** Applications for certificates must "set forth the geographic area in which it proposes to offer service and demonstrate that such area follows exchange boundaries of the incumbent local exchange telecommunications company and is no smaller than an exchange." Mo. Rev. Stat. § 392.455(3) (1996).

STATE STATUTES - RESTRICTIONS	MODEST RESTRICTIONS ON COMPETITION
Utah "An intervening incumbent telephone corporation serving fewer than 200,000 access lines in the state may petition the Commission to exclude from an application [filed by a CLEC] any local exchange with fewer than 5,000 access lines that is owned or controlled by the intervening incumbent telephone corporation. Upon finding that the action is consistent with the public interest, the Commission shall order that the application exclude such local exchange." Utah Code Ann. § 54-8b-2.1(2)(c) (1953).	**Nevada** "The Commission may allow duplication of service by public utilities in an area if: (a) The service provided is related to telecommunications; and (b) it finds that the competition should occur and that any duplication of service is reasonable." Nev. Rev. Stat. Ann. § 704.330(7) (1997).
	Oregon Or. Rev. Stat. §759.020 (1989). Unless the Commission has declared a competitive zone, no CLECs unless the LEC consents, fails to protest application or is providing inadequate service; Or. Admin. R. 860-032-0005(7) & (8). A CLEC application certification may be granted only if the appropriate ILEC consents or does not protest or if, after a hearing, Commission determined ILEC is providing inadequate service. [In practice, ILECs haven't been protesting.]

STATE STATUTES - RESTRICTIONS	MODEST RESTRICTIONS ON COMPETITION
Louisiana "TSPs are permitted to provide telecommunications services in all historically designated ILEC service areas . . . with the exception of service areas served by ILECs with 100,000 access lines or less statewide." In re Regulations for Competition in the Local Telecommunications Market, General Order, app. B, sec. 202 (rel. April 1, 1997).	**Alaska** "In an area where the Commission determines that two or more public utilities are competing to furnish identical utility service and that this competition is not in the public interest, the Commission shall take appropriate action to eliminate the competition and any undesirable duplication of facilities." Alaska Stat. § 42.05.22(d) (1997).
New Hampshire New Hampshire 1995 Session Laws, Chapter 147, S.B. 106 § 374/22-f. Telephone utilities shall not construct or extend facilities in order to furnish services to premises within the service territory of another telephone utility that provides local exchange service and that has fewer than 25,000 excess lines unless 1. the utility in the territory requests it and 2. the Commission, upon petition finds and determines that the service proposed to be rendered will be consistent with the criteria set forth in RSA 374-22.e and RSA 374.22-g.	**Kansas** "The Commission finds that the guidelines [that a CPCN be granted if the service area of an incumbent rural telephone company is capable of sustaining more than one telecommunications provider] shall be adopted to the extent that such guidelines are not preempted by Federal law and are consistent with State law." In re General Investigation into Competition within the Telecommunications Industry in the State of Kansas, SCC Docket No. 190,492-U 94-GMT-478-GIT, Order on Reconsideration, paras. 34, 36 (rel. Feb. 3, 1997).
New Mexico "[A]ny telecommunications company with less than one hundred thousand access lines holding a certificate of public convenience and necessity to provide local exchange service to the public shall have the exclusive right to provide local exchange service within its certificate service territory and shall not be subject to competition in the provision of local exchange service in its certificate service territory." N.M. Stat. Ann. § 63-9A-6 D (1997). "In determining whether the public convenience and necessity require such second plant or equipment the Commission shall consider and determine upon substantial evidence whether the following conditions existed at the time of the filing of said application: (1) the existing telephone or telegraph service is inadequate to meet the reasonable needs and convenience of the public." N.M. Stat. Ann. §63-9-9 B (1997).	**Minnesota** Minn. R. 7812.0300(3)E (1997). A certificate to provide local facilities-based service cannot be issued unless the business or owner's equity is positive.

STATE STATUTES - RESTRICTIONS	MODEST RESTRICTIONS ON COMPETITION
North Carolina "[The Commission shall not be authorized to issue a certificate] applicable to franchised areas within the State that are being served by local exchange companies with 200,000 access lines or less located within the State." N.C. Gen. Stat. § 62-110 f(2) (1997).	**Missouri** Applications for certificates must "set forth the geographic area in which it proposes to offer service and demonstrate that such area follows exchange boundaries of the incumbent local exchange telecommunications company and is no smaller than an exchange." Mo. Rev. Stat. § 392.455(3) (1996).
Utah "An intervening incumbent telephone corporation serving fewer than 20,000 access lines in the state may petition the Commission to exclude from an application [filed by a CLEC] any local exchange with fewer than 5,000 access lines that is owned or controlled by the intervening incumbent telephone corporation. Upon finding that the action is consistent with the public interest, the Commission shall order that the application exclude such local exchange." Utah Code Ann. § 54-8b-2(2)(c) (1953).	**Nevada** "The Commission may allow duplication of service by public utilities in an area if: (a) The service provided is related to telecommunications; and (b) it finds that the competition should occur and that any duplication of service is reasonable." Nev. Rev. Stat. Ann. § 704.330.7 (1997).
	Oregon Or. Rev. Stat. §759.020 (1989). Unless the Commission has declared a competitive zone, no CLECs unless the LEC consents, fails to protest application or is providing inadequate service; Or. Admin. R. 860-032-0005(7) & (8). A CLEC application certification may be granted only if the appropriate ILEC consents or does not protest or if, after a hearing, Commission determined ILEC is providing inadequate service. [In practice, ILECs haven't been protesting.]

ALASKA

ALASKA STATUTES
Title 42. Public Utilities and Carriers.
Chapter 05. Alaska Public Utilities Commission Act.
Article 3. Certificate of Public Convenience and Necessity.

Current through End of 1997 Reg. Sess.

Sec. 42.05.221 Certificates required.

(a) A public utility may not operate and receive compensation for providing a commodity or service without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require or will require the service. Where a public utility provides more than one type of utility service, a separate certificate of convenience and necessity is required for each type. A certificate must describe the nature and extent of the authority granted in it, including, as appropriate for the services involved, a description of the authorized area and scope of operations of the public utility.

(b) All certificates of convenience and necessity issued to a public utility before July 1, 1970 remain in effect but they are subject to modification where there are areas of conflict with public utilities that have not previously been required to have a certificate or where there is a substantial change in circumstances.

(c) A certificate shall be issued to a public utility that was not required to have one before July 1, 1970, and that is required to have one after that date, if it appears to the commission that the utility was actually operating in good faith on that date. Such a certificate is subject to modification where there are areas of conflict with other public utilities or where there has been a substantial change in circumstances.

(d) In an area where the commission determines that two or more public utilities are competing to furnish identical utility service and that this competition is not in the public interest, the commission shall take appropriate action to eliminate the competition and any undesirable duplication of facilities. This appropriate action may include, but is not limited to, ordering the competing utilities to enter into a contract that, among other things, would:

(1) delineate the service area boundaries of each in those areas of competition;

(2) eliminate existing duplication and paralleling to the fullest reasonable extent;

(3) preclude future duplication and paralleling;

(4) provide for the exchange of customers and facilities for the purposes of providing better public service and of eliminating duplication and paralleling; and

(5) provide such other mutually equitable arrangements as would be in the public interest.

(e) If the commission employs professional consultants to assist it in administering this section, it may apportion the expenses relating to their employment among the competing utilities.

(f) [Repealed, § 12 ch 136 SLA 1980.]

(§ 6 ch 113 SLA 1970; am § 1 ch 76 SLA 1973; am § 12 ch 136 SLA 1980; am §§ 15, 16 ch 168 SLA 1990)

<General Materials (GM) - References, Annotations, or Tables>

Effect of amendment. -- The 1990 amendment, effective June 22, 1990, deleted "after January 1, 1971" following "commodity or service" in the first sentence in subsection (a) and made a series of minor stylistic changes in subsection (e).

NOTES TO DECISIONS

A certificate of public convenience and necessity is a property right and as such entitled to protection. Homer Elec. Ass'n v. City of Kenai, 423 P.2d 285 (Alaska 1967).

Substantial need for service. -- This section requires a showing of public convenience and necessity and is limited specifically to "services;" thus, the Alaska Public Utilities Commission (APUC) only needs to determine whether there is a substantial need for a service. Similarly, the requirement of AS 42.05.241 that APUC find the applicant to be "fit, willing and able to provide the utility services applied for" only requires the commission to focus on the applicant. Neither inquiry requires an exploration into the costs associated with environmental externalities or public subsidies not paid for by consumers as part of the rate charged for the service. Alaska Fed'n for Community Self- Reliance v. Alaska Pub. Utils. Comm'n, 879 P.2d 1015 (Alaska 1994).

Certificate does not grant monopoly. -- A certificate of public convenience and necessity to a public utility by the Alaska Public Service Commission is not an exclusive, or monopoly, grant to furnish electrical energy within the corporate limits of a city. Chugach Elec. Ass'n v. City of Anchorage, 426 P.2d 1001 (Alaska 1967).

A public utility's certificate did not grant to it the exclusive right to furnish electrical energy within the corporate limits of a city. Homer Elec. Ass'n v. City of Kenai, 423 P.2d 285 (Alaska 1967).

Municipality may compete with certificated utility. -- The delineation of a service area contained in a certificate of public convenience and necessity does not provide the basis for precluding a municipality from competing, within its own corporate limits, with a certificated utility. Chugach Elec. Ass'n v. City of Anchorage, 426 P.2d 1001 (Alaska 1967).

The legislature did not intend, by virtue of its passage of the 1963 amendments to this chapter, that a certificate of public convenience and necessity was to be a monopoly grant in relation to competition from a municipally owned and operated utility. Homer Elec. Ass'n v. City of Kenai, 423 P.2d 285 (Alaska 1967).

The Public Service Commissioner's issuance, to a public utility, of a certificate of public convenience and necessity providing for a service area which encompassed within its territory a city did not preclude such city from furnishing electrical energy within its own city limits, in competition with such public utility's electrical distribution system. Homer Elec. Ass'n v. City of Kenai, 423 P.2d 285 (Alaska 1967).

Legislative intent. -- In enacting subsection (b) of this section the legislature indicated its intention that any right afforded certificated utilities under former AS 42.05.196 was not saved. Alaska Pub. Utils. Comm'n v. Chugach Elec. Ass'n, 580 P.2d 687 (Alaska 1978), overruled on other grounds, City & Borough of Juneau v. Thibodeau, 595 P.2d 626 (Alaska 1979).

Subsection (b) of this section was supplemented by AS 42.05.271, which provides for the modification, suspension or revocation of certificates for several listed reasons, including the requirements of public convenience and necessity. Alaska Pub. Utils. Comm'n v. Chugach Elec. Ass'n, 580 P.2d 687 (Alaska 1978), overruled on other grounds, City & Borough of Juneau v. Thibodeau, 595 P.2d 626 (Alaska 1979).

Subsection (d) of this section relates to questions of duplication of electrical services or facilities and the interpretation of a utility's certificate of public convenience and necessity. Greater Anchorage Area Borough v. City of Anchorage, 504 P.2d 1027 (Alaska 1972), overruled on other grounds, City & Borough of Juneau v. Thibodeau, 595 P.2d 626 (Alaska 1979).

Operation of garbage disposal sites does not constitute a utility service; it is only the passing over of control of solid waste to the disposal site operator which is regulated as a utility function. McClellan v. Kenai Peninsula Borough, 565 P.2d 175 (Alaska 1977).

Dumpsters are not equivalent of final landfill sites. -- Interpretation that dumpsters serving as intermediate dump sites qualify as the functional equivalent of final landfill sites is not reasonable in that it would allow the Borough to place dumpsters in such a pervasive fashion as to completely vitiate the requirement of former AS 29.48.033(b) and former subsection (f) of this section that certificate holders be compensated for their interests. McClellan v. Kenai Peninsula Borough, 565 P.2d 175 (Alaska 1977).

Quoted in Homer Elec. Ass'n v. City of Kenai, 816 P.2d 182 (Alaska 1991).

Cited in Drake v. Fairbanks N. Star Borough, 715 P.2d 1167 (Alaska 1986).

A. S. 42.05.221

AK ST § 42.05.221

END OF DOCUMENT

KANSAS

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Timothy E. McKee, Chair
Susan M. Seltsam
John Wine

In the Matter of a General Investigation Into Competition within the Telecommunications Industry in the State of Kansas.	))))	Docket No. 190,492-U 94-GIMT-478-GIT

ORDER ON RECONSIDERATION

NOW the above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. Background

1. On December 27, 1996, the Commission issued an order in the above captioned docket.

2. On January 14, 1997, the following parties filed petitions for reconsideration: Southwestern Bell Telephone Company (SWBT), The Citizens' Utility Ratepayer Board (CURB), Kansas City Fiber Network and Multimedia Hyperion Telecommunications (KC Fiber), AT&T Communications of the Southwest, Inc. (AT&T), Sprint Spectrum, L.P., CMT Partners (CMT), Independent Telecommunications Group (Columbus) and the State Independent Alliance, Mercury Cellular, and Mountain Solutions, Inc. Mercury Cellular filed a petition for reconsideration although it was not a party to the docket. The Commission is unable to consider petitions for reconsideration from non-parties. K.A.R. 82-1-225.

However, the issues raised by Mercury were raised by other parties and were considered.

3. On January 24, 1997, SWBT filed a response to several of the petitions for reconsideration.

4. On December 12, 1997, the Commission received by letter Council Grove Telephone Co.'s acceptance of the Independent Telephone Company Stipulation and Agreement. On August 23, 1996, Mountain Solutions, Inc. filed an application to intervene. On September 12, 1996, the Commission issued an order granting Mountain Solutions, Inc. intervention. The Order should be amended to include Mountain Solutions, Inc. as a party.

II. Discussion

5. The petitions for reconsideration will be addressed on an issue-by-issue basis.

A. Price Cap Issues

6. Productivity Factor: SWBT and CURB request reconsideration of the productivity offset (X-factor), of 3 %, established in the December 27, 1996 Order. SWBT asserts the X- factor set in the Order is too high for the following reasons:

a. Empirical evidence demonstrates the nationwide TFP differential is 2.2-2.5%. The average offset is 2.2% in states with infrastructure requirements.

b. Adoption of a 3% factor fails to balance efficiency and investment as required by the State Act, and will constrain investment, jobs and economic development in the state.

c. Unrebutted evidence shows that inter and intra-state access services have much higher growth rates than the intrastate services that are subject to the price cap.

d. The 0.4 input price differential adopted by the Commission was not subject to cross-examination because the Selwyn/Kravtin studies supporting it were only produced at the very end of the proceeding. SWBT includes information that the California PUC found that the input price differential in the Kravtin/Selwyn study lacked support in the evidence and was not statistically different from zero. SWBT adds that the last 5 years of data in the study showed a 0.5 % greater LEC input price growth than for the general economy.

e. Recent interexchange carrier price increases are an indication of increased costs and manufacturers have announced a 15% increase in the cost of fiber optic cable. The State Act requires fiber connection between central offices.

f. The adoption of a competitive services subbasket and the failure to automatically deregulate price when there is one alternative provider, as well as the service by service imputation requirement constrain SWBT and require a lower TFP factor.

7. CURB's reconsideration petition asserts that the productivity factor is too low for the following reasons:

a. The 5.3% productivity factor better reflects current and forward-looking telecommunications trends and continued declining industry costs which are equally applicable to local and interstate services.

b. There is no evidence the 5.3% productivity offset would not encourage efficiency and promote investment.

8. Determination of an appropriate productivity offset is difficult. As CURB notes the evidence ranged from a low of 1.25% to above 5%. The Commission finds that the record evidence does not support a productivity offset in the upper part of the range. Evidence was clear that the difference in growth rates between interstate access service to which the 5.3% offset applies and local services is significant. The Commission further notes that the FCC revises the interstate offset yearly. In its reconsideration petition SWBT provides a thorough analysis of the record in light of new information. The Commission specifically notes the recent increase in the cost of fiber optic cable in view of the requirement of K.S.A. 1996 Supp. 66-1,187(q) to link central offices with fiber optic cable or the technological equivalent. CURB's petition reiterates arguments rejected in the Order. CURB claims there is no evidence demonstrating that a 5.3% X-factor will not promote efficiency and investment, but cited to no evidence that it will.

9. On the basis of SWBT's petition the Commission believes that the 3% X-factor may be too high for the price cap methodology, particularly when considering the infrastructure requirements imposed by the state legislation. The Commission notes that SWBT's petition also documents recent price increases by interexchange carriers, which must be a result of increased cost.

10. Staff's memorandum recommended that the Commission set the X-factor in the 2.2-2.5% range. The evidence shows that the average X-factor is 2.2% in

states with an infrastructure investment requirement. Weisman Tr. 2102. Since 2.2% is the average, states have clearly set both higher and lower factors. The Commission does not believe that the evidence justifies a lower X-factor. It should be set so as to provide a challenge to the company to be as efficient as possible. SWBT witness Bernstein in his rebuttal exhibit 2 established an LEC average X-factor of 2.5% and an X-factor for the economy in general of 0.2%, resulting in a total factor productivity differential of 2.3%. The Commission finds that 2.3% is an appropriate X-factor and grants SWBT's reconsideration petition to lower the X-factor, while denying CURB's petition to increase it.

11. Basket Three Subbaskets: AT&T requests the Commission to reconsider its decision not to group Basket Three services in subbaskets with individual price caps. AT&T asserts the price cap mechanism acts as a revenue cap allowing for cross subsidization of the more competitive services by monopoly services, because the basket contains competitive/discretionary and monopoly/essential services. Establishment of a limited number of subbaskets would preclude cross-subsidization which erects economic barriers to competition in violation of the Federal Act.

12. There was considerable evidence provided regarding grouping of Basket Three services in subbaskets. The Commission considered this evidence in its initial decision. The Commission is mindful of the potential for cross subsidization. To guard against the possibility of cross subsidization, the Commission created the Competitive SubBasket, into which competitive services

may be moved. Those competitive services will then be subject to a separate price cap and price floor. Staff's Memorandum recommended that this measure was sufficient to protect against cross subsidization.

13. The Commission finds that the services in Basket Three, with some exceptions, are competitive in nature or optional. The Commission therefore sees less need to constrain their pricing. The establishment of the competitive services subbasket, with its separate price cap and price floor is sufficient to guard against cross subsidization. The Order is affirmed with respect to this issue.

14. Guidelines for Reducing Regulation: SWBT asserts the order does not establish guidelines for reducing regulation as required by Section 6(m) (K.S.A. 1996 Supp. 66-2005(m). SWBT argues that the competitive flexibility plan established by the order does not provide a clear road map to deregulation for LECs to follow. SWBT asserts the competitive flexibility plan will require multiple hearings on a single issue--the competitiveness of each service in each exchange--and that it will increase rather than decrease the regulatory burden.

15. In its Memorandum Staff advised the Commission it believes SWBT misunderstands the competitive flexibility plan. A price cap regulated company may petition for inclusion of a service in the competitive subbasket on a statewide basis and also for a group of services in one particular exchange (defined in paragraph 64). Staff informed the Commission it does not anticipate that hearings would be required in most instances. Staff believes the plan meets the requirements of the legislation.

16. The Commission agrees with Staff that the competitively flexible plan, not only is intended to allow price cap regulated companies the necessary flexibility in an increasingly competitive business environment, but will in fact operate to provide that flexibility. Staff's interpretation of how the plan is intended to operate is correct. The Commission certainly does not anticipate holding hearings on every service in every exchange. The Commission finds that the plan complies with the law and will have the intended effect of reducing regulation of services that are in transition to deregulation. The order is affirmed.

B. KUSF

17. Business Lines: Columbus asserts the Commission should allow KUSF funding for business lines. Columbus argues business lines should be included because LEC access rates provide support for costs associated with both residential and business lines. Columbus also states the Federal Act requires comparable services in rural and urban areas at comparable prices. Columbus argues if business lines are not included, cost-based rates for urban business lines will not be comparable to cost-based rates for rural business lines. Columbus also asserts KUSF funding for business lines is in the public interest because businesses have the same health and safety needs as residential customers, pass-through of costs for business lines to business customers will be a disincentive to economic development, and increasing the cost of business service is not an appropriate way to protect rural companies from cherry picking. AT&T argues the Commission should allow KUSF funding for business lines. AT&T generally agrees business service rates should be

based on cost. However, AT&T asserts SWBT will be able to internally subsidize rates and states the denial of KUSF funding for business lines is discriminatory.

18. The incumbent companies remain revenue neutral with respect to the access rate rebalancing. They lose no support for current lines in service. The question is whether a net gain in business lines should qualify for a per line subsidy. The Commission was advised that the Joint Board in the federal universal service proceeding recommended universal service funding for one residential and one single line business line. The Commission believes the KUSF was designed to assure that all Kansans have access to universal service at an affordable price and was not intended to provide subsidies to businesses, especially not large businesses which require more than a single line. The Commission finds, however, the arguments presented justify KUSF funding for single line business lines at least until the FCC's universal service funding decision is issued and its impact is assessed. Single line business lines qualify for a $3.50 EUCL, as do residential lines in the federal jurisdiction. The Commission believes the KUSF was not enacted to promote economic development and that it would be inappropriate to require telephone companies and customers to fund economic development on the basis of rates for service. Therefore, the Commission grants the requested relief to the extent set forth above.

19. <u>Kansas Universal Service Fund Mechanism</u>: AT&T, K.C. Fiber and CURB assert the universal service mechanism does not consider the cost of providing universal service, but merely spreads the access reductions across all

providers and does not address the inherent problem in the industry of the lack of a relationship between cost and prices. They further assert that the Federal Act prohibits cross subsidization of competitive services by non-competitive services by mandating the state to establish cost allocation rules, accounting safeguards and guidelines to insure services in the universal service definition bear no more than a reasonable share of joint and common costs of facilities to provide those services. Section 254(k). These parties contend the historic imbalance between price and cost needs to be corrected with the advent of competition and implicit subsidies must be removed. Failure to examine the relevant cost of providing local service makes it impossible to determine implicit subsidies and has resulted in a universal service mechanism which deprives the ALECs of a source from which to draw a subsidy to provide competitive local exchange service. AT&T asserts that"there was no dispute regarding the fact that prices for local service are below cost in certain areas of the state. . ." (p.4) CURB asserts "there is no significant or overall subsidy of basic local residential rates[.] " and that SWBT's incremental costs of residential basic local service were overstated by some material amount. (p.6) AT&T and K.C. Fiber assert that failure to examine relevant cost of providing local service has led to an improperly sized KUSF, depriving the ALECs of a source from which to draw a subsidy to provide competitive local exchange service. K.S.A. 1996 Supp. 66-2008(d) directs the Commission to review the costs of providing local service.

20. CURB has cited to cost study evidence presented by it. Cost study evidence was also presented by SWBT and to some extent by Staff. SWBT's

evidence shows that the company's total local exchange cost is $ 506 million. Cooper Tr. 2151-9. If this amount is spread on a per line basis, it shows that each line would need to recover $34.50 per month to cover its local exchange cost. In order to constitute a subsidy the local service rate, including the EUCL and the CCL for inter and intrastate access would need to exceed $34.50. There is no evidence in the record that these charges do so. General knowledge leads the Commission to believe they do not. The Commission acknowledges this calculation averages costs and revenues and does not reflect cost/price relationship in discrete areas. Neither the Federal Act nor the State Act contain requirements that the Commission undertake a restructuring of local service rates.

21. Although AT&T, CURB and K.C. Fiber complain in general that the KUSF is not based on cost and does not follow federal law, they do not cite to evidence indicating the decision lacks a basis in the record. The burden is on the party seeking reconsideration to cite to evidence. K.A.R. 82-1-235. The Commission is not required to search the record for evidence supporting reconsideration.

22. With respect to Section 254(k) of the Federal Act, the Commission has established accounting safeguards to preclude cross subsidization by implementation of the price cap plan, the competitive services subbasket and the imputation requirement. The access charge reduction operates to remove implicit subsidies.

23. Sections 254 (e) and (f) of the Federal Act generally require compliance with FCC guidelines for the federal universal service mechanism, an order on which will not be issued until May. They allow adoption of state mechanisms that

are not inconsistent with the FCC rules and require that state mechanisms not rely on or burden the federal mechanism. The Commission will need to evaluate the KUSF for consistency with the FCC order, but obviously cannot make the necessary determinations until the FCC has acted. Sections 251 and 252 have also been cited. They address cost based determinations of interconnection issues. They do not require the Commission to restructure local service prices.

24. K.S.A. 1996 Supp. 66-2008(d) requires the Commission to review the KUSF "periodically" to determine if the costs to provide local service justify modification of the KUSF. However, K.S.A. 1996 Supp. 66-2008(a) requires that incumbent LECs be revenue neutral. The initial amount of the KUSF must be determined in the manner set out in the order. The evidence supports the decision and the order is affirmed.

25. <u>KUSF Distributions</u>: AT&T asserts the Order confuses access rate rebalancing and the KUSF. AT&T states under K.S.A. 1996 Supp. 66-2005(c), only access rate rebalancing is required to be done in a revenue neutral manner. AT&T also comments that K.S.A. 1996 Supp. 66-2008(c) requires that KUSF contributions be competitively neutral. AT&T argues that K.S.A. 1996 Supp. 66-2008(c) was not intended as a revenue neutral, make-whole provision for the LECs.

26. The Commission has ordered no rate rebalancing although it is authorized by K.S.A. 1996 Supp. 66-2005(c). K.S.A. 1996 Supp. 66-2008(c) addresses distributions from the KUSF, not contributions to the fund. The Commission agrees that both distributions and contributions to the KUSF must occur in a

competitively neutral manner. The Commission finds that the order establishes a competitively neutral distribution and contribution methodology. However, K.S.A. 1996 Supp. 66-2008(a) requires the initial KUSF amount to be comprised of revenues lost through access charge and toll reductions. The Commission denies reconsideration of this issue.

27. Funding Methodology: K.C. Fiber and CMT assert the KUSF funding methodology is discriminatory and a barrier to entry. K.C. Fiber states all companies providing local exchange service in competition with incumbent LECs must contribute 14.1% to the KUSF while the LECs do not. K.C. Fiber also states the local service wholesale discount to ALECs would be based on the local rate increased by the KUSF assessment pass-through.

28. The Commission recognizes that confusion regarding the KUSF funding methodology exists and wishes to clarify the methodology set out in its Order. All providers of intrastate telecommunications services, including incumbent LECs, will be subject to the same KUSF assessment. K.S.A. 1996 Supp. 66-2008(b) authorizes all contributors to pass through the assessment to their customers. No company is required to pass the assessment through. However, if a LEC decides to pass the assessment through to its customers, the Commission established a method the incumbent LECs must use for doing so. Even if a company passes the assessment through in the form of higher prices for local service, the assessment does not constitute a local service rate increase. It remains a KUSF assessment, which may vary from year to year. Any wholesale discounts from local

service prices will be based on the local service price without the KUSF assessment. As stated in the order, the Commission did not order rate rebalancing. Thus, local service rates remain the same as before the assessment, regardless of the manner in which the assessment is passed through. Independent LECs that increase their local rates to reach statewide average rural rates as authorized by K.S.A. 1996 Supp. 66-2005(d) will of course include any such increases since they are an integral part of the local rate and not a separate assessment. The Commission finds the funding mechanism is not a barrier to entry because it is funded through the same assessment on all contributors and the wholesale rate is not affected by the assessment. Therefore, the Commission denies reconsideration of this issue.

29. Subsidy Amount: AT&T asserts $36.88 is meaningless for any loop in SWBT territory because SWBT receives no federal universal service funding support. AT&T also states no evidence exists which indicates the $36.88 will cover the cost of an unbundled loop. Sprint seeks clarification of how the $36.88 and recovery from customers will impact the incumbent LEC's total KUSF support. K.C. Fiber asserts that limiting ALEC recovery to $36.88 violates K.S.A. 1996 Supp. 66-2008(c).

30. K.S.A. 1996 Supp. 66-2008(a) requires that incumbent LECs remain revenue neutral. The $36.88 loop cost support payment will help insure the independent LECs remain revenue neutral. The $36.88 was determined to be the loop cost needed to be funded by the KUSF by considering the average loop cost and federal universal service funding support. Parties expressed concern regarding

KUSF support for rural areas when the LEC in not eligible for universal service funding support. Several small incumbent LECs do not receive federal universal service funding support because their service territory is not "high cost." For SWBT, the high rural area cost per loop has been averaged with the many loops in the metropolitan areas resulting in ineligibility for federal universal service funding support. The Commission has established a generic docket 97-SCCC-149-GIT to investigate cost studies. In the cost study docket, cost of facilities will be determined in order to set prices for interconnection. The loop cost for different density zones will be determined. Staff recommended that the level of loop cost support in rural areas be incorporated into the generic cost study docket. The Commission, therefore, denies reconsideration of this issue and incorporates consideration of loop cost support in the generic cost study docket.

31. In its Comments on Petitions for Reconsideration SWBT raised the issue of inclusion of the KUSF assessment in revenue determinations for municipal fee assessments. The Commission directs companies using the Uniform System of Accounts, Part 32, to book the KUSF assessment revenues in Account No. 5264. Consistent with other determinations in this order the KUSF assessment is not a part of the rate for local service.

C. KANSAS LIFELINE PROGRAM

32. CURB asserts the Lifeline Program is inadequate in light of rate increases LECs may charge. The Commission disagrees. The $3.50 discount exceeds increases customers will bear if companies decide to pass through KUSF

assessments. Furthermore, the Lifeline Program is the first of its kind in Kansas and will allow customers to become eligible for a federal lifeline matching amount that will double support payments customers receive. If the FCC significantly alters the federal program, the Commission may revisit the issue. The Order is affirmed with respect to this issue.

D. RURAL GUIDELINES

33. Columbus claims the Commission failed to "follow the mandate of the Kansas Act in establishing rural guidelines." The Commission adopted rural entry guidelines which enumerated the statutory requirements for rural entry. (Order ¶ 175, Attachment B). The State Act requires the Commission to adopt guidelines to ensure all telecommunications carriers and local exchange carriers preserve and enhance universal service. The Commission may issue a certificate to provide service in a rural telephone company exchange area if the application meets the guidelines issued pursuant to K.S.A. 1996 Supp. 66-2004(b) and other relevant criteria. K.S.A. 1996 Supp. 66-2004(d). Any decisions regarding rural entry must be made on a case-by-case basis.

34. Columbus proposes the following guidelines be considered when an applicant requests authority to provide service in a rural telephone service area:

- proposed competitive entry would not negatively effect preserving and advancing universal service, at reasonable and affordable rates and with high service quality, in the incumbent service area;
- competition pursuant to the application would not negatively effect the continued existence of a viable carrier of last resort, capable of providing high quality, affordable required telecommunications services to anyone in the service area on request;

- the service area of the incumbent rural telephone company is capable of sustaining more than one telecommunications service provider;

- the new entrant into a rural telephone company service area will provide, operate and maintain high capacity facilities and services to schools, medical facilities, and libraries;

- the new entrant should satisfy the Commission that it will not violate the intent of the law and will provide service throughout the service area of the rural telephone company;

- accommodating multiple telecommunications service providers in the rural telephone company service area must be technically feasible; and

- the economic burden of implementing measures necessary to effect these technical requirements must not be excessive or unreasonable.

35. Columbus submits that the guidelines must be established *by the applicant* before a company could be certificated to offer service in a rural telephone company's service area. It appears Columbus intends that the applicant bear the burden of proof. The Federal and State Acts state the Commission must make a determination that the request is not unduly economically burdensome, is technically feasible and preserves and enhances universal service (Section 254 of the Federal Act). The burden of proof does not appear to be assigned to either party.

36. The Commission finds that the guidelines proposed by Columbus shall be adopted to the extent such guidelines are not preempted by Federal law and are consistent with State law. Consistent with Federal and State law, the prefatory language included by Columbus placing the burden of proof on the applicant is not incorporated into the Commission guidelines. Columbus' petition for

reconsideration is granted in part, to the extent that the proposed rural entry guidelines are adopted as modified herein.

E. CELLULAR CONCERNS

37. Notice: CMT alleges it did not receive adequate notice of these proceedings. CMT concedes that everyone is presumed to know the law, but challenges notice regarding the Commission proceeding.

38. K.S.A. 1996 Supp. 66-2002(h) and 66-2008(b) state the Commission must establish the Kansas universal service fund on or before January 1, 1997. K.S.A. 1996 Supp. 66-2008(b) also states the Commission "shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services to contribute to the KUSF. . . " H.B. 2728 put the wireless service providers on notice that a proceeding would be conducted before the Commission and completed prior to January 1, 1997.

39. Notice of the hearing was published in newspapers of general circulation throughout Kansas. All telephone companies were required to provide notice in the form of billing inserts to all customers. (Order ¶ 99) The published notice and the billing inserts stated that "[a]ll companies providing any form of telecommunications service in the state will pay into [the universal service] fund." Additionally, the notice stated the time and place of the technical hearing.

40. In addition, Staff, in early July, 1996, mailed a request to all cellular carriers known by Staff to be providing service in the state of Kansas. The request

was titled "Assessment for the Universal Service Fund" and directed the companies to provide information as to revenues for services provided to Kansas customers. (Lammers, Tr. 2981-2982)

41. The Commission found at the hearing that notice was proper and affirmed the bench ruling in the Order. (Order ¶ 102) The Commission finds that notice is proper and affirms the Order.

42. Federal Preemption: CMT, Sprint Spectrum and Mountain Solutions argue that the State is preempted by Federal Law from requiring wireless providers to contribute to Universal Service. K.S.A. 66-104a(c) exempts wireless providers from jurisdiction, regulation, supervision and control of the Commission. However, K.S.A. 1996 Supp. 66-2008(b) requires every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services to contribute to the KUSF on an equitable and nondiscriminatory basis.

43. Section 152(b) of the Federal Act states that except for section 332 (inter alia) nothing in the Federal act gives the FCC jurisdiction over charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate service of wireless carriers.

44. Section 254(f) permits states to establish universal service regulations and requires that all telecommunications carriers contribute to the universal service fund, in an equitable and nondiscriminatory manner. Telecommunications carrier

is a defined term (Section 3(44)) and includes any provider of telecommunications services except aggregators.

45. Section 332(c)(3)(A) provides that, notwithstanding section 152(b), states cannot regulate rates charged by wireless carriers. However, that section does not prohibit states from regulating other terms or conditions of mobile service.

46. The Joint Board stated in its universal service recommendation to the FCC that several CMRS commenters argued that CMRS providers should be exempt from state universal service funds, pursuant to Section 332(c)(3). The Joint Board found that section 332(c)(3) does not preclude states from requiring CMRS providers to contribute to state support mechanisms. The Joint Board noted that 254(f) requires all contributions be equitable and nondiscriminatory.

47. CMT, Sprint Spectrum, and Mountain Solutions, Inc. cited Metro Mobile CTS of Fairfield County, Inc., et. al. v. Conn. Dept. of Public Utility Control, Case No. CV-95-0051275S (December 9, 1996) to support the argument that states are preempted from assessing wireless providers for universal service. The Connecticut Department of Public Utility Control (DPUC) argued that assessments for universal service are allowed by the language "other terms and conditions of mobile service" which the states may regulate, and are not requirements imposed to ensure universal service. The Connecticut Court found that states were preempted from assessing wireless providers for universal service. The Court interpreted section 332(c)(3)(A) as permitting states to assess wireless providers only when there is a finding that wireless services are a substitute for landline service. The Court also

voided the assessment on the grounds that the statute delegating authority to the DPUC violated the separation of powers and due process clauses of the Connecticut Constitution.

48. The Kansas Constitution differs from the Connecticut Constitutional provisions. Further, the Kansas statute differs from the Connecticut statute regarding contributions to the state universal service fund.

49. Section 254(f) specifically provides that states may require all telecommunications carriers (definition appears to include wireless providers) to contribute to state universal service funds. Section 254(f) further provides that states may establish additional definitions and standards as long as they do not rely on or burden Federal universal support mechanisms.

50. Whenever possible, statutes should be interpreted so as to be consistent. Staff believes that in order to read Sections 254(f) and 332(c)(3) as consistent, "requirements . . . necessary to ensure universal . . . service" in Section 332(c)(3) must mean something other than the contribution to preserve and advance universal service as set out in Section 254(f). The State Act imposes numerous other requirements necessary to ensure universal service on LECs. It does not impose those requirements on wireless companies.

51. The Connecticut state court ruling is not controlling as to decisions of this Commission. The Commission finds that the State Act requires that every telecommunications carrier, telecommunications public utility and <u>wireless telecommunications</u> service provider that provides intrastate telecommunications

services contribute to the KUSF. K.S.A. 1996 Supp. 66-2008(b) Further, the Commission finds that K.S.A. 1996 Supp. 66-2001 et. seq. is not preempted by Federal law. Therefore, the Commission denies reconsideration of this issue.

F. CURB SUPPLEMENTAL ISSUES

52. CURB requested reconsideration of sixteen additional issues but provided no support nor citation to the record in its request. K.S.A. 77-529 states "Any party . . . may file a petition for reconsideration with the agency head, stating the specific grounds upon which relief is requested." CURB's request for reconsideration did not state with sufficient specificity the grounds upon which it requests reconsideration. Therefore, the Commission denies reconsideration of these issues.

F. CLARIFICATION ISSUES

53. Sprint requested clarification of the subsidy amount - whether the $36.88 amount is a monthly or yearly figure. The $36.88 amount is a yearly figure, per residential loop and single line business line.

54. Sprint and Columbus requested clarification of the statement "up to" $36.88 at ¶ 124 of the Order. If a LEC's access charge reduction amounts to less than $36.88 per line, the LEC will only receive the amount necessary to remain revenue neutral. No LEC will receive more than $36.88.

55. Columbus requested clarification of how rural companies will recover contributions to the KUSF referring to a possible "phasing in" of recovery of

replacement revenue from rural customers. Recovery from customers will be determined by each company. Staff is available for consultation.

56. Columbus requested clarification of which revenues will be subject to the 14.1% assessment for LECs. Net intrastate retail revenues from regulated services are subject to the assessment. Attachment A to this Order provides further definition of revenues subject to assessment.

57. Columbus asked whether customers' payments for recovery of the KUSF contributions are subject to the 14.1% KUSF assessment. Yes, KUSF flow-through amounts are considered retail revenue and are included in the base amount for determination of the amount payable to the KUSF.

58. Columbus requested clarification on coin telephone and other miscellaneous charges. These charges only apply to SWBT and United and will have no impact on what independent LECs receive from the fund. The coin telephone and miscellaneous charges affect the manner in which the KUSF assessment is flowed through to customers by SWBT and United but have no impact on the amount the independent LECs will receive from the fund.

59. Columbus asked for clarification of the statement "must offer to provide service to all customers in the rural telephone company study area as defined by the FCC." Section 214(e)(1)(A) & (B) of the Telecommunications Act of 1996 states: "A common carrier designated as an eligible telecommunications carrier . . . shall be eligible to receive universal service support in accordance with section 254 and shall . . . (A) <u>offer</u> the services that are supported by Federal universal

service support mechanisms under section 254(c), . . . and (B) advertise the availability of such services and the charges therefor using media of general distribution." What constitutes "offer" may become an issue in rural entry proceedings.

60. Columbus stated imposition of new charges on rural telecommunications customers is inequitable. Only customers placing the highest number of calls will benefit by access rate reductions. Only those who obtain benefits should bear the cost. K.S.A. 1996 Supp. 66-2008(b) states: "[t]he commission shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services to contribute to the KUSF on an equitable and nondiscriminatory basis. Any telecommunications carrier, telecommunications public utility or wireless telecommunications service provider which contributes to the KUSF may collect from customers an amount equal to such carrier's, utility's or provider's contribution." The Commission notes that customers may benefit from access to long distance service even if they do not place many long distance calls.

61. Columbus requested clarification of the differences between a "rural telephone company serving area" and a "rural area." The Commission defines rural telephone company serving area and area qualifying for universal support similarly. Rural telephone serving area is defined in K.S.A. 1996 Supp. 66-1,189(k) as "(1) In the case of a rural telephone company, operating area or service area means such company's study area or areas as approved by the federal

communications commission; (2) in the case of a local exchange carrier, other than a rural telephone company, operating area or service area means such carrier's local exchange service area or areas as approved by the commission."

62. Columbus asked for clarification on which issues of the April 4, 1996 order stand as originally ordered. Section II (A) (9 & 10) Kansas Universal Service Fund; (C) (19, 20, 21) Items to be Supported; (E) (26) Promotion of Universal Service and Telephone Subscribership and (E) (27) Statewide Average Toll Rates; (F) (28) Definition of Basic Service.

63. Columbus requested the Commission define the term ALEC, explain under which regulatory regime ALECs will provide service, and whether KUSF support would be available for facilities-based ALECs only. An ALEC is a telecommunications carrier certified to provide local service after January 1, 1996. According to K.S.A. 1996 Supp. 66-2005(v), telecommunications carriers are exempt from price regulation. They will be subject to quality of service requirements. KUSF support will be available for facilities-based ALECs. KUSF support for ALECs providing service through unbundled elements (UNES) will be determined based on the method for pricing UNES. If the price is cost based, the LEC has fully recovered its cost and support should go to the ALEC. Final determination of these issues is best left until the FCC issues its universal service order.

64. Columbus requested clarification on supplemental funding. Any company may request supplemental funding for additional lines. Supplemental

funding through an expedited rate proceeding or a general rate case is reserved for rate of return regulated companies. K.S.A. 1996 Supp. 66-2008(e) and (f).

65. Columbus and AT&T requested clarification of the Stipulation. The stipulation is approved. The KUSF assessment for LECs will be made on net intrastate retail revenues for regulated services. KUSF assessment will be determined on an annual basis. As independent LECs raise their rates to the statewide average, their revenue reports will incorporate those increases. Incumbent LECs are subject to the same assessment percentage as all other carriers. The Commission's modification of the Stipulation to "not reduce the amount of funding for the KUSF" refers to paragraph 4 of the Stipulation. Paragraph 4 indicates that a movement to statewide average local rates is credited toward a LEC's assessment amount. When this credit occurs, the overall KUSF assessment amount is reduced. The provisions of the Stipulation can still be carried out and rate shock avoided by determining the full amount due the KUSF and collecting it from all the parties to the Stipulation.

66. AT&T asked for clarification on portability of the subsidy amount. The KUSF amount is paid on a per line basis. As a carrier reports additional lines to the KUSF administrator for supplemental funding, the line count will by necessity net gains and losses in lines. If a carrier experiences a declining line count there is no requirement to report. A requirement to report a declining line count may raise the stranded investment issue and whether or not it should be compensated. The subsidy amount cannot be said to "follow" either the customer or the carrier but is

determined on the basis of number of lines. At least initially the Act requires revenue neutrality. K.S.A. 1996 Supp. 66-2008(a). On a going forward basis, K.S.A. 1996 Supp. 66-2008(d) requires the Commission to "review the KUSF to determine if the costs . . . to provide local service justify modification of the KUSF."

67. AT&T requested that the Commission define the term "exchange." Exchange is generally defined as the incumbent local exchange company's local calling area (excluding EAS) as defined by the territory legal descriptions approved by the Commission. In the context of paragraphs 140-149 of the December 27, 1996 Order the following definition applies: a small geographic area such as a wire center or zone within a metropolitan exchange. It does not include all the wire centers or zones within a metropolitan exchange. This limitation is designed to allow the price cap regulated LEC pricing flexibility within a competitive wire center of a metropolitan exchange without allowing it the ability to inappropriately recover potential competitive losses through increased rates in those other wire centers in the metropolitan exchange where customers do not yet have access to the competitive services available from alternative providers. When an entire exchange (as per the general definition) is declared competitive, all the wire centers and zones within the exchange boundaries will be included.

68. SWBT requested the Commission clarify that the sentence in paragraph 151 regarding price cap index calculation was not intended to alter the statutory scheme regarding price cap plans. Paragraph 151 regarding price cap index calculation was not intended to alter the statutory scheme regarding price cap plans.

69. Any issue not addressed specifically in this ordered is affirmed.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

The Petitions for Reconsideration of the Commission's December 27, 1996 Order are hereby granted in part and denied in part and the Order is clarified as set forth above.

The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

McKee, Chr.; Seltsam, Com.; Wine, Com.

Dated: FEB 03 1997

ORDER MAILED
FEB 03 1997
Executive Director

Judith McConnell
Executive Director

EP/JC/MD

Docket No. 190,490-U Order dated 2/3 1996. ATTACHMENT 1

REVENUES SUBJECT TO KUSF ASSESSMENT

Retail revenues are derived from service to an end user, not to a reseller, or ALEC. Retail revenues exclude revenues from resold services, unbundled local access services, and access for providing long distance service.
A company purchasing a service for resale to an end user will assess the KUSF assessment on revenues collected from its end users. The wholesale company will not include services which it sells to resellers in its retail revenues. Services purchased for internal use and not resold to end users will be considered retail revenues to the wholesale company, which should assess any KUSF assessment on such revenues. They will not be included in the reseller's retail revenues. Revenues from services sold to STS providers are retail revenues and will be reported by the LEC. The STS provider will not report its retail revenue to the KUSF.

Retail revenues include, but are not limited to revenues from the following types of services and charges:

- intrastate local service, intrastate vertical services, intrastate private line service, coin service, directory assistance, directory listings, mobile service billed to end users, special access service billed to end users.
- Long distance service, intercity special access billed to end users.
- Revenues from comparable services billed by wireless providers to Kansas customers, including monthly charges, usage, roaming usage when the tower used is in Kansas, and intrastate long distance charges.
- Miscellaneous charges including: late payment charges, customer fees, nonrecurring and installation.
- KUSF assessments that are flowed through as charges to the customer.

Retail revenues do not include revenues derived from the following types of services and charges:

- Franchise tax pass-on charges.
- Local, state, and federal taxes.
- Interstate long distance, and special access services.
- Federal USF payments.

Additional definitions to determine reportable revenues.

- The local calling area takes precedence over the state and interstate jurisdictions. For LECs revenues derived from calls from Kansas City, KS to Kansas City, MO within the LEC's local calling area are considered local and should be included. For Cellular companies revenues derived from a retail sale involving the use of furnishing of a mobile phone, cellular phone, beeper or other similar service shall be considered to have been consummated at the billing address of the subscriber as it appears in the retailer's records.
- Revenues from long distance and special access services are considered to be intrastate revenues when both parties to the call are within the same state, regardless of the routing or servicing of the call. Thus a Wichita to Topeka call routed through Chicago is an intrastate call.

LOUISIANA